

## MEMORANDUM

DATE: June 18, 2007

TO: All Members of the Delaware State Senate  
and House of Representatives

FROM: Ms. Daniese McMullin-Powell  
Chairperson  
State Council for Persons with Disabilities

RE: H.B. 173 [DUI Sentencing]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 173 which would increase DUI fines, increase authorized sentences for repeat offenders, and require use of alcohol monitoring devices for 4<sup>th</sup> and higher offenses with authorization for courts to impose them for lower offenses. SCPD has the following observations.

First, DUI is a source of disability for drivers, passengers, and pedestrians. Therefore, the SCPD has previously endorsed deterrent legislation, including the lowering of the DUI limit from 0.10 to 0.08. However, the Council has also promoted judgment and restraint in punishment of persons with drug/alcohol addiction.

Second, the synopsis indicates that fines have not been increased “in a number of years”. With some limited exceptions, the bill would have the following effect on fines:

Offense	Current §4177(d) [effective 7/1/07]	H.B. 173
First	\$230-\$1150	\$300-\$1500
Second	\$575-\$2300	\$800-\$3000
Third	\$1000-\$3000	\$1500-\$3000
Fourth	\$2000-\$6000	\$2500-\$7500
Fifth	\$2000-\$6000	\$3500-\$10000
Sixth	\$2000-\$6000	\$5000-\$10000
Seventh	\$2000-\$6000	\$10000-\$15000

In addition to the fines, covered offenders would be required to pay for the cost of alcohol monitoring devices and/or electronic monitors (lines 65-67). As a practical matter, the “high end” fines may be difficult to pay. Offenders generally lose their license [Title 21 Del.C. §4177A] for periods ranging from 1 year (1<sup>st</sup> offense) to 5 years (4<sup>th</sup> offense) subject to application for a conditional license if certain conditions are met [Title 21 Del.C. §4177C]. Moreover, under the bill, periods of imprisonment range from 6 months (optional for 1<sup>st</sup> offense) to 10-15 years (mandatory for 7<sup>th</sup> offense). Individuals subject to loss of their license and lengthy incarceration will have attenuated financial ability to pay huge fines. The anomaly is that offenders with the least ability to pay due to lengthy jail sentences are required to pay the largest fines. The Legislature may wish to consider more moderate increases.

Third, the current statute [§4177(d)(5)] authorizes the Attorney General to move the sentencing court to apply “third offense” sentencing standards to persons charged with 4<sup>th</sup> or subsequent offenses. This provides for the exercise of professional discretion by the prosecutor based on extenuating circumstances. For example, a person with an alcohol addiction with no prior record could have 4 separate DUI arrests within 4 days. Under these circumstances, the prosecutor could recommend incarceration of 1-2 years rather than 2-5 years. This statutory authorization is deleted by H.B. 173. The Legislature may wish to consider reinstatement of some variation of the authorization.

Fourth, the bill makes all sentences of imprisonment “minimum sentences” (line 25). This is ostensibly stricter than the current statute [§4177(d)(3)(4)]. There is also some tension between adopting an approach requiring judges to impose at least certain minimum sentences and House passage of H.B. 71 on April 3 (which was previously endorsed by SCPD). The latter bill repeals mandatory minimum sentences relating to drug convictions and “returning to our State’s outstanding judiciary the discretion to pronounce sentences appropriate to the cases and individuals before them.”

Finally, in a related context, the Legislature may wish to consider the increased incarceration rates that may result from H.B. 173. Under current law, the maximum sentence is 5 years [§4177(d)(4)] which is tripled to 15 years (lines 23-24) by this bill. There is no fiscal note with this bill to address potential increased costs to the Department of Correction.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position on the proposed legislation.

cc: The Honorable Ruth Ann Minner  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council  
Office of the Public Defender  
ACLU

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